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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:BR2

PLR-150116-10

Date:

January 20, 2011

LEGEND

Parent =

Date 1 =

Date 2 =

Date 3 =

x =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated December 3, 2010, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time for the consolidated group of which Parent is the common parent to elect an extended carryback period for its consolidated net operating loss (CNOL) incurred in the taxable year ending Date 1 (the "Election"). Additional information was submitted in a letter

dated December 22, 2010. The material information submitted for consideration is summarized below.

Parent is the common parent of a consolidated group. The group incurred a CNOL for the group's taxable year ending Date 1. Parent filed a Form 1139, Corporation Application for Tentative Refund on Date 2, a date prior to the due date for filing the Form 1139, but after the due date for the group's consolidated income tax return, electing an x year carryback period.

The Election was due on the due date (with extensions) of the group's consolidated income tax return for the tax year ending Date 1, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under ' 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under ' 6501(a) has not expired for the group's consolidated income tax return for the taxable year in which the CNOL was incurred or any subsequent taxable year.

Section 172(b)(1)(H)(i) of the Internal Revenue Code permits a taxpayer to elect to carry back its applicable net operating loss (applicable NOL) to 3, 4, or 5 years preceding the taxable year of the applicable NOL. Section 172(b)(1)(H)(ii) provides that the term "applicable net operating loss" means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

Section 172(b)(1)(H)(iii) provides that the election under § 172(b)(1)(H) shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. The election is irrevocable and, in general, may be made for only one taxable year.

Section 1502 provides that the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

Under § 301.9100-1(c) the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The election for a consolidated group to elect an extended carryback period for its CNOL is a regulatory election. Therefore, the Commissioner has discretionary authority under ' 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of ' ' 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to file timely a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See ' ' 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3 for Parent to file the Election, as described immediately below.

Parent having already filed a Form 1139 on Date 2, electing an x year carryback period, may file the election by supplementing its Form 1139 by attaching a copy of this letter to the Form 1139. This must be done no later than Date 3. Alternatively, within 45 days of the date on this letter, Parent may file the Election for an x year carryback period on Form 1120X, Amended U.S. Corporation Income Tax Return, according to the procedures set forth in Rev. Proc. 2009-52, 2009-52 I.R.B. 744. A copy of this letter must be attached to Form 1120X. If Parent files Form 1120X electronically, Parent may satisfy the requirement of attaching a copy of this letter by attaching a statement to their amended return that provides the date and control number (PLR-150116-10) of the letter ruling.

The above extension of time is conditioned on the taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayer's tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal

income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the taxpayer's tax liability is lower. Section 301.9100-3(c).

We express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under ' 301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under ' 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)